

The Senate of The State of Texas

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OPINION COMMITTEE



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I.D. # 46315

Senator Eddie Lucio, Jr.

January 15, 2010

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711-2548

RQ-0854-GA

Dear General Abbott:

At the behest of the City of Brownsville's Public Utilities Board, I am requesting an opinion regarding the interpretation and application of statutes relating to the assessment of impact fees under Chapter 395, Local Government Code, by a municipality in the context of any progress made toward completion of a project under Chapter 245, Local Government Code.

The following facts may be helpful to provide a context for your review. The City of Brownsville assessed impact fees on 13 subdivision projects relevant to the issues presented in this letter. The City of Brownsville Planning Department and its utility, the Brownsville Public Utilities Board, estimate that developers have paid originally assessed impact fees on the 13 subdivision projects. The plat applications for these subdivision projects, however, are currently either lapsed or inactive. The impact fees imposed from 1990 to April 2009 amounted to a total of \$280 for each residential lot. In April 2009, the City of Brownsville increased the impact fees to \$2,600 for each residential lot to reflect present costs for servicing the subdivision projects. The developers, as the original developer or as a subsequent developer, are currently seeking a grandfathered status or claiming a vested right to be subject to the originally assessed impact fees of \$280 for each residential lot. At issue is the appropriate impact fee to be assessed.

Under the following scenarios, the questions I would like addressed in the context of your interpretation and application of the statutes are:

(1) Assuming a developer initiates a development plan, pays the impact fees applicable at the time of initiation, and retains ownership of the property, but allows a development plan to lapse due to inactivity under local ordinances and regulations:



(a) is the developer entitled to a refund of the impact fees if the municipality and the municipal utility have spent the impact fees previously collected to construct regional capital improvements associated with anticipated new growth?

(b) is the developer who later attempts to reinstate the development plan after the municipality adopts additional or increased impact fees entitled to grandfathered status or a vested right to be subject to the originally assessed impact fees?

(c) if the developer is entitled to a grandfathered status or a vested right under Subsection (b), can this right be transferred to a subsequent developer to allow that developer to resume a lapsed or inactive subdivision plan without paying additional or increased impact fees?

(2) Assuming a platted subdivision is assessed impact fees under Section 395.016(d), Local Government Code, but no impact fees are actually collected because of subdivision inactivity (for example, no requests for building permits or utility connections), and the municipality adopts additional or increased impact fees during the inactivity period:

(a) should a distinction be made between an "assessment" or determination of impact fees and an actual collection of impact fees under Sections 395.016(d) and (f), Local Government Code?

(b) does the enactment of an impact fee ordinance by a municipality constitute an "assessment" of an impact fee without any other specific act by the municipality?

(c) when subdivision activity begins, assuming that no increased subdivision use density requires any consumption of additional utility service units, does the developer pay the originally assessed impact fees or the additional or increased impact fees?

Your analysis will require an interpretation of Chapter 395, Local Government Code, in the context of Chapter 245, Local Government Code. More specifically, the following sources may be helpful in your review of the issues presented in this letter:

(1) Sections 245.004(6) and (8), 245.005(c), 395.016, 395.017, 395.025, 395.052, and 395.057, Local Government Code; and (2) Op. Tex. Att'y Gen. No. JC-425 (2001).

Thank you for your timely consideration of these issues.

Respectfully submitted,



Senator Eddie Lucio, Jr.  
Chairman, Senate Committee on  
International Relations and Trade